

**Before the
Federal Communications commission
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:

Implementation of the Satellite Home
Viewer Improvement Act of 1999

Retransmission Consent Issues

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CS Docket No. 99-363

Comments of LEXCOM Cable

Introduction. LEXCOM Cable is a “cable overbuilder” competing with Time Warner Cable in Davidson County, N.C.¹ LEXCOM began providing cable television services to subscribers in October, 1997, with 65 cable channels and now provides its subscribers with 88 analog channels. LEXCOM is in the process of completing the building of its network during 2000. Over the last three years, LEXCOM has significantly increased the cable services made available to local subscribers while keeping prices down. In fact, the company has not had a price increase since its service launch.

LEXCOM’s recent experiences during the current must-carry – retransmission consent election period suggest that the Commission should take the opportunity presented by the

¹ Davidson County, N.C. is part of the Winston Salem-Greensboro ADI. Pursuant to retransmission consent agreements, LEXCOM has provided its subscribers with the following local television signals: WFMY, Greensboro, N.C. (CBS); WFBX, Lexington, N.C. (WB); WLXI, Greensboro (Ind.); WXLV, Winston-Salem (ABC); WUPN, Greensboro, N.C. (UPN); WUNL, Winston-Salem, N.C. (PBS); WGHP, High Point, N.C. (Fox); WXII, Winston-Salem (NBC); and WAAP, Burlington, N.C. (IND).

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passage of the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”)² to describe more clearly what it deems to be “good faith” negotiations for retransmission consent and to proscribe conduct by local television stations that can only lead to results that are contrary to expressed public policy.

Background. The owners of several broadcast stations with ownership interests in certain cable satellite programming channels, have made it clear that they will only consent to the continued carriage of their local stations by LEXCOM Cable if LEXCOM Cable agrees to carry their satellite programming channels as well. Of course, LEXCOM would be required to pay a per subscriber fee for each channel. This practice -- holding local stations hostage for the carriage of channels that the cable operator has not selected for carriage – appears to be a growing trend and can result in significant cost increases which, at some point must be passed on to subscribers. The alternative, the inability to carry local television signals, places a system at a competitive disadvantage and creates the type of subscriber hostility recently reported in various communities across the country.

“Good Faith” Negotiation Must Be Compatible With Commission Goals. A retransmission consent demand that would have the effect of significantly increasing costs and, therefore, subscriber prices flies in the face of the Commission’s desire to maintain reasonable cable rates and can adversely affect the ability of the cable system to compete with other multichannel video programming distributors (“MVPDs”).

LEXCOM Cable has positioned itself to compete effectively in the Davidson County market and it can be presumed, as the Commission has always maintained, that the competition

² Public Law 106-113

provided by LEXCOM Cable has kept cable rates in the county lower than if there were no competition.³

Surely, it was never imagined by Congress or the Commission that the retransmission consent process would have the unintended consequence of driving otherwise unnecessary rebuilds or plant modifications. Nor was it envisioned that obtaining retransmission consent for the carriage of local stations might adversely affect a cable system's ability to compete with other MVPDs. The same legislation that required retransmission consent also instituted the rate regulation program designed to lower cable rates and keep them from growing unreasonably. Although this program has now been abandoned in favor of relying on marketplace forces to accomplish the same results, the federal goal of cable rate restraint remains.

LEXCOM Cable has developed its business plan based on a large capacity analog system and, at the present time, has no need of a digital tier. The decision to build and operate a digital tier should not be driven by retransmission consent demands. Yet, this is precisely what can happen, particularly if the practice of consenting to carriage of local signals is conditioned on the carriage of other channels when analog capacity is insufficient.

LEXCOM Cable is not suggesting that it has been presented with retransmission consent demands that contravene any present law or Commission rule. However, passage of SHIVIA presents the Commission with the opportunity for the first time to look beyond the mere requirement that retransmission consent be obtained as a condition of signal carriage. The Commission should now inquire into the process as well. SHIVIA's requirement that negotiations by stations be conducted in good faith provides an occasion to define "good faith"

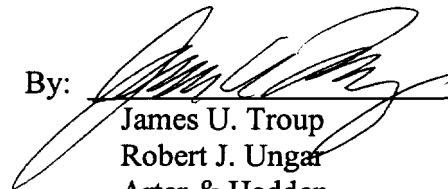
³ It is no accident that Time Warner charges the same subscriber fee as LEXCOM Cable in Davidson County, but right over the county line charges 20% more.

in a manner that promotes compliance with existing Commission policies. One can hardly maintain that negotiations are conducted in good faith if the only options are to concede to a demand that will place a system at a competitive disadvantage and cause it to raise its prices, or to forgo the carriage of a local signal. The retransmission consent process was not intended to frustrate the Commission goals of more choice, better service and lower prices. Where a broadcast station's negotiating position offers options that are all contrary to public policy, the Commission should find that the requirement for good faith negotiations has not been met.

Respectfully submitted,

LEXCOM CABLE

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